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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2014–0005; T.D. TTB–126; Ref: Notice No. 143]

RIN 1513–AC07

Expansion of the Fair Play Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the approximately 33-square mile “Fair Play” viticultural area in El Dorado County, California, by 1,200 acres (approximately 2 square miles). The established viticultural area and the expansion area are both located entirely within the larger El Dorado and Sierra Foothills viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth the standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes involving established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;

- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition to Expand the Fair Play AVA

TTB received a petition from Randy and Tina Rossi, owners of Saluti Cellars winery and vineyard, proposing that the established Fair Play AVA in El Dorado County, California, be expanded. The Fair Play AVA (27 CFR 9.168) was established by T.D. ATF-440, which was published in the **Federal Register** on February 26, 2001 (66 FR 11539). The Fair Play AVA contains approximately 250 acres of commercially producing vineyards and covers approximately 33 square miles in southern El Dorado County, California, around the small, unincorporated community of Fair Play. The proposed expansion area and the established AVA are both located within the El Dorado AVA (27 CFR 9.61), which, in turn, is within the larger, multicounty Sierra Foothills AVA (27 CFR

9.120). The Fair Play AVA and the proposed expansion area do not overlap any other established or proposed AVAs.

The proposed expansion area is adjacent to the northeast corner of the established Fair Play AVA boundary and covers approximately 1,200 acres (approximately 2 square miles). One commercial vineyard, Saluti Cellars, is within the proposed expansion area. The petition included a letter from the president of the Fair Play Winery Association in support of the proposed expansion.

According to the petition, the soils, topography, and climate of the proposed expansion area are similar to those of the established Fair Play AVA. The proposed expansion area and the established AVA are both regions of steep hillsides and ridge tops with elevations between 2,000 and 3,000 feet. The soils of the proposed expansion area and the established AVA are deep, well-drained sandy loams and coarse sandy loams derived mainly from granite, with the Holland, Musick, and Shaver soil series being the most prevalent soil series. Finally, the proposed expansion area and the Fair Play AVA both have growing seasons of between 230 and 250 days and receive between 35 and 40 inches of rain annually.

Although the proposed expansion area is more similar to the Fair Play AVA than the surrounding regions, the proposed expansion area still shares some of the features of the surrounding El Dorado and Sierra Foothills AVAs. For example, the well-drained sandy loam soils that characterize the proposed expansion area are also found in limited amounts within the two larger AVAs,

although the most common soils within the El Dorado and Sierra Foothills AVA are poorly drained volcanic soils. The proposed expansion area is a region of rolling hills that become progressively steeper, similar to the topography of the El Dorado and Sierra Foothills AVAs. However, the range of elevations within the smaller proposed expansion area is not as great as within the two larger AVAs, which have elevations ranging from 500 to 3,500 feet. Finally, although the range of annual rainfall amounts and the growing season lengths within the proposed expansion area and the Fair Play AVA are within the ranges of those of the larger El Dorado and Sierra Foothills AVA, the wider range of elevations within the two larger AVAs results in a much wider range of precipitation amounts and growing season lengths.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 143 in the **Federal Register** on June 17, 2014 (79 FR 34474), proposing to expand the Fair Play AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed expansion area, and for a comparison of the distinguishing features of the proposed expansion area to the surrounding areas and to the established Fair Play AVA, see Notice No. 143.

In Notice No. 143, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the

petition. The comment period closed on August 18, 2014. TTB received no comments in response to Notice No. 143.

TTB Determination

After careful review of the petition, TTB finds that the soil, climate, and topography evidence provided by the petitioner sufficiently demonstrates that although the proposed expansion area shares some of the broader characteristics of the larger El Dorado and Sierra Foothills AVAs, it is also similar to the established Fair Play AVA and should also be recognized as part of that AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB expands the 33-square mile “Fair Play” AVA to include the approximately 2-square mile expansion area as described in Notice No. 143, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the AVA expansion in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA

name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Fair Play AVA will not affect any other existing AVA, and bottlers using “Fair Play,” “El Dorado,” or “Sierra Foothills” as an appellation of origin or in a brand name for wines made from grapes within the “Fair Play,” “El Dorado,” or “Sierra Foothills” AVAs will not be affected by this expansion of the Fair Play AVA. The expansion of the Fair Play AVA will allow vintners to use “Fair Play,” “El Dorado,” or “Sierra Foothills” as appellations of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit

derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Section 9.168 is amended by revising paragraphs (b), (c)(4) through (c)(7), (c)(12), and (c)(13) to read as follows:

§ 9.168 Fair Play.

(a) * * *

(b) Approved maps. The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Fair Play viticultural area are titled:

- (1) Aukum, Calif., 1952 (photorevised 1973);
- (2) Camino, CA, 1952 (photorevised 1973);
- (3) Sly Park, CA, 1952 (photorevised 1973); and
- (4) Omo Ranch, Calif., 1952 (photorevised 1973).

(c) * * *

(4) The boundary continues east along Grizzly Flat Road to its intersection with the 2200-foot contour line ("Camino Quadrangle");

(5) The boundary continues northeasterly and then easterly along the 2200-foot contour line until the contour line intersects with Jackass Canyon Creek near the eastern boundary of Section 10, T. 9 N., R. 12. E., on the "Camino Quadrangle" map;

(6) The boundary then proceeds southeast along Jackass Canyon Creek, crossing over the southwestern corner of the "Sly Park" Quadrangle map and onto the "Omo Ranch" Quadrangle map, to the headwaters of the creek, then proceeds in a straight line southeast to Grizzly Flat Road in Section 24, T. 9 N., R. 12 E.;

(7) The boundary continues east along Grizzly Flat Road until the road intersects with the range line between R. 12 E. and R. 13 E. ("Omo Ranch Quadrangle");

* * * * *

(12) The boundary continues west along the South Fork of the Cosumnes River to its intersection with the western boundary of Section 14, T. 8 N., R 11 E. ("Aukum Quadrangle");

(13) The boundary then proceeds north along the western boundary lines of Sections 14, 11, and 2, T. 8 N., R 11 E., and then the western boundary lines of Sections 35 and 26, T. 9 N., R 11 E., to return to the beginning point ("Aukum Quadrangle").

Signed: October 14, 2014.

John J. Manfreda,

Administrator.

Approved: November 18, 2014.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

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